IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1237 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMAILBHAI AHMEDBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

MR AD OZA, Public Prosecutor for Respondent No. 1

MR JK Parmar for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/02/2001

ORAL JUDGEMENT

1. Heard the learned advocate for the petitioner Mr.D.M.Thakkar, on behalf of the State - learned Public

Prosecutor Mr.Oza and on behalf of the respondent No.2 - Mr.J.K.Parmar.

2. A Criminal Case No.602 of 1993 has been filed by the present respondent No.2 directly in the court of the learned Chief Judicial Magistrate, Godhra against the present petitioner under sections 420 and 406 of IPC on 24.2.1993 wherein process has been issued and it is challenged by the present petitioner under section 482 of the Criminal Procedure Code on the ground that the petitioner is dealing in transport business and having a small Pan shop at Khambhat. The petitioner has purchased a new truck from Tata Engineering Company in the year 1990 bearing Registration No.GJ-7-T 6276 and the same has been hypothecated with the Cambay Hindu Mercantile Bank and from that day the petitioner is the owner of the truck in question.

2.1 The present respondent No.2 had filed false complaint on the ground that, he had purchased the truck in question through one Nareshbhai Jayantilal Parmar from the petitioner by agreeing to pay Rs.2,91,786/-. It is further case of the complainant that, he had paid Rs.5000/- to the petitioner as earnest money through one Nareshbhai Parmar and had promised to pay rest of money on or before 17.12.1992. It is also alleged by the complainant that, he has also paid Rs.90,000/- through Nareshbhai Parmar to the present petitioner, and on 10.11.1992 the petitioner alongwith Nareshbhai Parmar had approached the complainant to repurchase the truck from him, and therefore, resale price was fixed between the parties at Rs.3,02,786/-, and complainant respondent No.2 had sent the truck in question with his driver to the present petitioner - original accused at his residence at Khambhat on 12.11.1992 alongwith Rs.5000/-. Thereafter, the petitioner original accused has not paid any amount to the complainant, and therefore, he has filed the present complaint.

3. It reflects from the complaint that the alleged transaction (oral agreement) had taken place between the parties and as per the say of the complainant, the amount has been paid by him to the present petitioner original accused through Nareshbhai Parmar. Looking to the complaint itself, it does not disclose the offence in question, but prima facie it appears to be concocted one and required to be quashed and set aside at this stage. Over and above, verification is also not done by the concerned trial Judge before issuing the process. At the most it can be said that it is the civil dispute between the parties, but the respondent No.2 has tried to convert

the same into criminal one which is not required to be encouraged at any stage and therefore the complaint is required to be quashed and set aside. Reliance is placed on 1997 (2) GLR, 1655 decided by this court.

4. In view of the above, Complaint No.602 of 1993 filed before the Chief Judicial Magistrate, Godhra is hereby quashed and set aside. Rule is made absolute with no order as to costs.

(R.P.Dholakia,J)
(pathan)